

Proposed North Carolina Comments for the Revised Uniform Fiduciary Access to Digital Assets Act

[§ 36F-1. Short title.]

North Carolina Comment

Chapter 36F of the General Statutes contains substantially the text of the Revised Uniform Access to Digital Assets Act (2015). Most of the variations from the Uniform Law Commission's text conform to this State's numbering system and its stylistic drafting conventions and are not separately noted. No change from the Uniform Act's meaning was intended. By way of example, the designators "a.," "b.," and "c." were substituted at the sub-subdivision level for the designators "(A)," "(B)," and "(C)," the definitions section and the sections with lists were reformatted and the introductory and other language altered to account for the reformatting, and the words "of this section" (or subsection, subdivision, etc.) were added after internal references to subunits of an individual section throughout the Chapter. The designation "(2015)" was not included in the title simply to avoid confusion since the law was enacted in this State in 2016.

[§ 36F-2. Definitions.]

North Carolina Comment

The terms "conservator" and "protected person" were changed to terms more familiar to attorneys in this State, "guardian" and "ward." In the definition of "guardian," the drafters added a list of the types of guardians that may be appointed under this State's laws which qualify under this definition. In the definitions of "electronic communication" and "remote computing service," the bracketed phrase "as amended" was considered unnecessary and accordingly not included. The definition of "person" was changed to include specific references to types of business organizations that may not qualify as entities for all purposes in this State.

[§ 36F-7. Disclosure of content of electronic communications of deceased user.]

North Carolina Comment

In subdivision (3), the Uniform Act's bracketed phrase providing a generic description of documents appointing a personal representative was deleted and a more detailed list substituted, and in sub-sub-subdivision (5)a.2., the bracketed phrase "as amended" was not included as being unnecessary.

[§ 36F-8. Disclosure of other digital assets of deceased user.]

North Carolina Comment

In subdivision (3), the Uniform Act's bracketed phrase providing a generic description of documents appointing a personal representative was deleted and a more detailed list substituted.

[§ 36F-12. Disclosure of contents of electronic communications held in trust when trustee not original user.]

North Carolina Comment

In subdivision (2), "certified" was changed to "verified" to conform to this State's practice.

[§ 36F-14. Disclosure of digital assets to guardian of ward.]

North Carolina Comment

The beginning of subsection (a) was changed from "After an opportunity for a hearing under [state conservatorship law] ..." to the more precise "After a hearing on a motion in the cause pursuant to G.S. 35A-1207" [The change is also designed to clarify that the granting of access to the ward's digital assets may not be by *ex parte* motion.]

[§ 36F-15. Fiduciary duty and authority.]

North Carolina Comment

In subdivision (b)(4), "may not" was changed to "shall not" to comply with this State's drafting conventions. No substantive change was intended.

In subsection (g)(2), the Uniform Act's bracketed phrase providing a generic description of documents appointing a personal representative was deleted and a more detailed list substituted.

[§ 36F-16. Custodian compliance and immunity.]

North Carolina Comment

The bracketed phrase "as amended" in subsection (b) of the Uniform Act's text was not included as being unnecessary. In subsection (d), the phrase "or designated recipient" was inserted after the second reference to "fiduciary" to parallel the phrasing at the beginning of the sentence.

First draft of a supplemental drafters comment to **G.S. 36C-8-816** reflecting the amendment by s. 9 of S.L. 2016-53:

SUPPLEMENTAL NORTH CAROLINA COMMENT (2016)

Effective June 30, 2016, this section is amended to add subdivision (33), which provides a cross-reference concerning trustees in Chapter 36F of the General Statutes, the Revised Uniform Fiduciary Access to Digital Assets Act.

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